

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

May 13, 2002

IN RE:

**DOCKET TO DETERMINE THE COMPLIANCE
OF BELL SOUTH TELECOMMUNICATIONS,
INC.'S OPERATIONS SUPPORT SYSTEMS
WITH STATE AND FEDERAL REGULATIONS**

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**DOCKET NO.
01-00362**

**ORDER GRANTING THE MOTION TO MAKE RESPONSE TO DISCOVERY
PART OF EVIDENTIARY RECORD**

This matter came before the Tennessee Regulatory Authority ("Authority" or "TRA") at a regularly scheduled Authority Conference held on March 26, 2002, for consideration of the *Motion to Make Response to Discovery Part of Evidentiary Record* filed by AT&T Communications of the South Central States, Inc. ("AT&T"), TCG MidSouth, Inc. ("TCG") and Southeastern Competitive Carriers Association ("SECCA") on March 2, 2002.

Background

The Authority held a Hearing from December 3 to December 6, 2002 on the Phase I issues in this docket, during which the Directors ordered BellSouth Telecommunications, Inc. ("BellSouth") to file, no later than January 18, 2002, a response to Interrogatory No. 36.¹ To allow consideration of BellSouth's response to Interrogatory No. 36, the Authority set filing dates for Post-Hearing Briefs and Proposed Findings of Fact and Conclusions of Law for Phase I, which were extended seven (7) and

twenty-one (21) days, respectively, from the date BellSouth filed its response to Interrogatory No. 36. BellSouth filed its response to Interrogatory No. 36 on February 21, 2002. The parties filed their post-hearing briefs on March 1, 2002. The post-hearing brief of AT&T, TCG, and SECCA includes an analysis of the response to Interrogatory No. 36.²

On March 2, 2002, AT&T, TCG, and SECCA filed the *Motion to Make Response to Discovery Part of Evidentiary Record*. The *Motion* states that BellSouth has no opposition to the admission of its response to Interrogatory No. 36 into the evidentiary record. BellSouth did not file a response to the *Motion*.

The parties filed their proposed Findings of Fact and Conclusions of Law on March 15, 2002. The Findings of Fact and Conclusions of Law filed by AT&T, TCG and SECCA refer to BellSouth's response to Interrogatory No. 36.³

March 26, 2002 Authority Conference

At the regularly scheduled Authority Conference held on March 26, 2002, the Directors considered the *Motion to Make Response to Discovery Part of Evidentiary Record*. Guy Hicks, counsel for BellSouth, and Henry Walker, counsel for SECCA and Brooks Fiber Communications of Tennessee, Inc., were in attendance. Susan Berlin, counsel for MCImetro Access Transmission Services, L.L.P. and Michael Hopkins, counsel for AT&T and TCG, participated telephonically.

¹ Interrogatory No. 36 was jointly filed on September 17, 2001 by AT&T, TCG and SECCA.

² See *Phase I Post-Hearing Brief AT&T Communications of the South Central States, Inc., TCG MidSouth, Inc. and the Southeastern Competitive Carriers Association*, pp. 28-30.

³ See *Phase I Proposed Findings of Fact and Conclusions of Law of AT&T Communications of the South Central States, Inc., TCG MidSouth, Inc. and the Southeastern Competitive Carriers Association*, ¶ 22.

Before addressing the *Motion to Make Response to Discovery Part of Evidentiary Record*, the Authority posed several questions to the parties. The Authority asked BellSouth whether it objected to the *Motion to Make Response to Discovery Part of Evidentiary Record*. BellSouth responded that it had no objection.

The Authority then specifically inquired of the parties whether they were waiving their right to interrogate, cross-examine and impeach the source of the information contained in BellSouth's response to Interrogatory No. 36.⁴ Each party expressly waived its right to interrogate, cross-examine and impeach the source of the information contained in BellSouth's response to Interrogatory No. 36 as to Phase I, but reserved its right to interrogate, cross-examine and impeach the source of the information contained in BellSouth's response to Interrogatory No. 36 in Phase II of this proceeding.

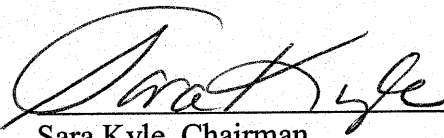
The Authority also inquired whether the parties agreed that the agency could resolve the issues in Phase I on the present record once the response to Interrogatory No. 36 is admitted. The parties stated that they had no objection to the Authority proceeding to resolve Phase I issues on the present record once the response to Interrogatory No. 36 is admitted.

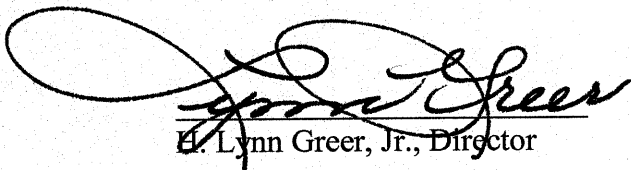
Based upon the grounds set forth in the Motion and the statements of the parties expressly waiving the opportunity to cross-examine this evidence in Phase I, the Directors voted unanimously to grant the *Motion to Make Response to Discovery Part of Evidentiary Record*.

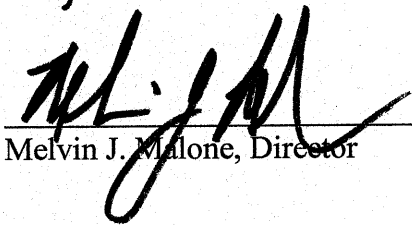
⁴ See Transcript of March 26, 2002 Authority Conference, pp. 16-18; see *Consumer Advocate v. TRA and United Cities Gas Co.*, No. 01-A-01-9606-BC-00286, 1997 WL 92079 at * 3 (Tenn. Ct. App. March 5, 1997).

IT IS THEREFORE ORDERED THAT:

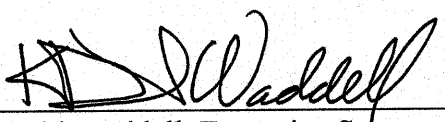
The *Motion to Make Response to Discovery Part of Evidentiary Record* filed by AT&T Communication of the South Central States, Inc., TCG MidSouth, Inc. and Southeastern Competitive Carriers Association is granted and BellSouth's response to AT&T Interrogatory No. 36 filed on February 21, 2002 shall be a part of the evidentiary record in Phase I of this proceeding.


Sara Kyle, Chairman


H. Lynn Greer, Jr., Director


Melvin J. Malone, Director

ATTEST:


K. David Waddell, Executive Secretary